

Indian Law Watch



भारत सरकार Government of India
विधि एवं न्याय मंत्रालय Ministry of Law & Justice
विधि कार्य विभाग Department of Legal Affairs
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Dated : 3rd September 2009.

OFFICE MEMORANDUM

Subject: Advice of the Ministry of Law in cases in which legal or constitutional issues are involved.

Under the Government of India (Allocation of Business) Rules, 1961, giving of advice on legal matters and interpretation of laws is one of the primary functions of the Department of Legal Affairs.

As early as in 1967, vide OM No.F.18(1)/69-O&M dated 20th May 1967, this Department has emphasized that in a case, if the Ministry/ Department feels that the facts of the case have not been fully appreciated or further clarification is needed in any matter, the case may be referred back to this Department for consideration and advice in the matter.

If, after further reference, the Department adheres to its previous advice, the same should be followed by the Ministry/ Department concerned. It is not appropriate on the part of any Ministry/Department to say that neither the latter is bound by the advice given by this Department nor can refuse to follow such advice. These instructions have been reiterated from time to time in the past.

2. In spite of these instructions, instances have come to notice where Ministries/Departments keep on making repeated references insisting for concurrence of this Department to a particular course of action.

3. In one such case, the High Court of Delhi in WP(C) No. 2893 of 2008 in the case of UOI vs. Govind Manish has taken a serious view in the matter and has observed as under:-

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“Notwithstanding, categorical opinion of the Department of Legal Affairs that it was not a fit case for filing the writ petition, the petitioner went ahead and filed the instant writ petition. Not that we are influenced by the remarks of the Department of Legal Affairs. For this reason, we have referred to these remarks only after considering the matters ourselves on its own merits. Reason for quoting the aforesaid opinion of the Department of Legal Affairs is that even when there are instructions that normally the Department should concede to such legal advice and should not challenge the orders by filing frivolous petitions/appeals, many times such advice is not heeded to. This tendency of filing appeals till the highest Court by the Government Department, and in turn becoming biggest litigant in this country, is one of the reasons clogging judicial systems with huge pendency.”

4. It is, therefore, re-iterated that once a considered view has been expressed by this Department, the Ministries/Departments should consider acting in terms of the advice tendered. If for some reasons, reconsideration of advice is desired, it should be done only with the approval of the Secretary of the concerned Ministry/Department. On reconsideration, if the advice is re-iterated, the Department should follow such advice.

5. The contents of this Memorandum may be brought to the notice of all concerned officers/staff.



(P.K. Malhotra)

Additional Secretary to the Govt. of India